IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1393 OF 2007

Arun S. Pawar, since deceased .
by his legal heirs ....Petitioners
V/s.
Vasant S. Pawar ....Respondent

Mr.V.S. Gokhale for the Petitioners.

Mr.Ashutosh Gole for Respondent No.1.

Mrs.Anjali N. Helekar for Respondent Nos.3 and 4.

CORAM : S.J. VAZIFDAR, J.
DATED : 23RD AUGUST, 2007.

P.C. :

1. Rule. Rule returnable and heard forthwith.

2. By an order dated 11.7.2007, I had issued the notice and made the same returnable on 25.7.2007. I have further stated that the matter may be disposed of finally at the admission stage. Respondent No.2 is absent despite being served.

3. The Petitioners have challenged the order of the learned Judge in the Court of District and Sessions Judge, Pune, dismissing their application for restoration of an earlier application which in turn is

also for restoration of the Appeal, which was dismissed for default.

4. The Petitioners' case is that on 7.2.2004, they were under the impression that the matter had been adjourned to 6.3.2004, whereas in fact it was adjourned to 20.2.2004.

5. It is not possible to hold that the learned Judge's reasoning is patently incorrect. However, it is difficult to decide with any degree of certainty that the Petitioners' case is totally false. In my opinion, the ends of justice would be served by permitting the Petitioners an opportunity of having the application for setting aside the order dismissing the Appeal for default heard on merits.

6. In the circumstances, the rule is made absolute in terms of prayer (a) with the clarification that :

i). This order however ought not to influence the decision in the application for restoration which shall be heard on its own merits.

ii). The Petitioners to pay Respondent No.1 costs of this Petition fixed at Rs.2000/-. The Petitioners shall further pay costs of this Petition to Respondent Nos.3 and 4 fixed at Rs.2000/- within a period of four weeks from today.